IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 651 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SABARKANTHA DISTRICT COOPERATIVE PURCHASE & SALE - Petitioner(s)

Versus

BHIKHAJI BHUPATJI CHAUHAN - Respondent(s)

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Appearance :

MR VARUN K PATEL FOR MR KM PATEL for Petitioner(s) : 1,
MR NK MAJMUDAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/09/2005

ORAL JUDGMENT

In the present petition, the petitioner-employer has challenged the legality of the award dated 27th September 2000 passed by the Labour Court, Himatnagar. By the impugned award, the Labour Court was pleased to set aside

the order of dismissal passed against the respondent and was further pleased to direct his reinstatement without backwages but with continuity of service and further directed that punishment of withholding of one increment with future effect be imposed on him.

2. The respondent was engaged for the purpose of filling petrol at the petrol pump run by the petitioner. Upon finding that he had misappropriated an amount of Rs.3168/-, a departmental inquiry was conducted against him. Eventually, the petitioner imposed penalty of dismissal from service against the respondent. The respondent challenged the action of the employer by raising an industrial dispute which was referred to the Labour Court and numbered as Reference (LCH) No.314/96.

3. In the impugned award, the Labour Court recorded that the workman had in his statement before the Inquiry Officer admitted that he had utilized the amount in question for his personal use. He had, therefore, admitted his guilt. He had voluntarily refunded the amount also. He had requested that considering his five years of service, a lenient view be taken. Despite this clear admission, which was never retracted by the

respondent, the Labour Court proceeded to interfere with the order of dismissal passed by the petitioner, directed reinstatement of the workman and provided for punishment of withholding of one increment with future effect.

4. The award passed by the Labour Court cannot be sustained. The respondent was proved to have committed serious misconduct of misappropriation of money belonging to the employer. The respondent had in fact admitted his guilt and had never sought to retract his statement. When such a serious misconduct is established against the respondent, there was no scope for interference with the punishment imposed by the petitioner. Time and again, the Hon'ble Supreme Court has been stating that the Courts and Tribunals can interfere with the quantum of punishment only when the punishment chosen by the employer is so disproportionate to the proved misconduct as to shock the conscience of the Court. In case of proved misconduct of misappropriation of considerable amount of money, there was no question of showing any leniency by the Labour Court.

5. In the result, the impugned award is therefore, set aside. Rule is made absolute accordingly with no order

as to costs.

(Akil Kureshi, J.)

(vjn)